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August 25, 2009

Clerk of Court  
United States District Court  
Union Station Courthouse  
1717 Pacific Ave., Rm. 3100  
Tacoma, WA 98402

Re: *Doe v. Reed*, Cause No. 09-5456-BHS

Dear Clerk:

The enclosed letter is being sent to Brian Murphy, Toby Nixon, Arthur West, and Brian Spencer advising each of the present litigation pending in the above-referenced matter as was ordered by Judge Settle in his Order filed August 24, 2009.

Sincerely,

A handwritten signature in black ink, appearing to read "James K. Pharris", is written over a horizontal line.

JAMES K. PHARRIS  
Deputy Solicitor General  
360-664-3027

Enclosure

cc: Counsel of Record  
Brian Murphy  
Toby Nixon  
Arthur West  
Brian Spencer



Rob McKenna  
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Brian Murphy  
WhoSigned.org  
brian.murphy.wa.usa@gmail.com

Toby Nixon, President  
Wash. Coalition for Open Government  
president@washingtoncog.org

Arthur West  
awestaa@gmail.com

Brian Spencer  
Thebettypages.design@gmail.com

Re: *Doe v. Reed*, Cause No. 09-5456-BHS

Gentlemen:

Enclosed is a copy of an Order from Judge Settle, which was filed yesterday, denying our motion to join each of you as an additional party to this litigation. Judge Settle specifically mentions the possibility that one or more of you might seek to intervene in the case (see p. 4 of the enclosed order). He also instructed us to inform you of his order.

If you have any questions, please feel free to contact me.

Sincerely,

JAMES K. PHARRIS  
Deputy Solicitor General  
360-664-3027

Enclosure

cc: Counsel of Record

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

JOHN DOE #1, an individual; JOHN  
DOE #2, an individual; and PROTECT  
MARRIAGE WASHINGTON,

Plaintiffs,

v.

SAM REED, in his official capacity as  
Secretary of State of Washington;  
DEBRA GALARZA, in her official  
capacity as Public Records Officer for the  
Secretary of State of Washington,

Defendants.

CASE NO. 09-5456BHS

ORDER DENYING  
DEFENDANTS' MOTION TO  
JOIN ADDITIONAL PARTIES

This matter comes before the court on Defendants' motion to join additional parties. Dkt. 23. The Court has considered the pleadings filed in support of and in opposition to the motion, and the remainder of the record, and hereby denies the motion for the reasons stated herein.

**I. BACKGROUND**

On July 29, 2009, Plaintiffs filed a complaint and motion for temporary restraining order, seeking to enjoin the Secretary of State from any public release of documents showing the names and contact information of those individuals who signed petitions in support of Referendum Measure No. 71 ("RM-71"). Dkts. 2 (Plaintiffs' complaint) and 3 (Motion for Temporary Restraining Order and Preliminary Injunction).

1 On July 29, 2009, the Court granted Plaintiffs' motion for temporary restraining  
2 order and scheduled a preliminary injunction hearing for September 3, 2009. Dkt. 9.

3 As of August 20, 2009, the Secretary of State has received five requests for public  
4 disclosure of the RM-71 petitions, one of which excluded "any and all information  
5 subject to [the Court's July 29, 2009] temporary restraining order." Dkt. 30 at 2.

6 Defendants now move the Court for an order requiring the following parties to join  
7 this action: (1) Brian Murphy of WhoSigned.org, (2) Toby Nixon, President of the  
8 Washington Coalition for Open Government, (3) Arthur West, and (4) Brian Spencer, on  
9 behalf of Desire Enterprises. Dkts. 23 and 30. Plaintiffs have filed a response in  
10 opposition to Defendants' motion. Dkt. 28.

## 11 II. DISCUSSION

12 Federal Rule of Civil Procedure 19 governs required joinder of parties:

13 A person who is subject to service of process and whose joinder will  
14 not deprive the court of subject-matter jurisdiction must be joined as a party  
if:

15 (A) in that person's absence, the court cannot accord complete relief  
among existing parties; or

16 (B) that person claims an interest relating to the subject of the action  
and is so situated that disposing of the action in the person's absence may:

17 (i) as a practical matter impair or impede the person's ability to  
protect the interest; or

18 (ii) leave an existing party subject to a substantial risk of  
incurring double, multiple, or otherwise inconsistent obligations because of  
the interest.

19 Fed. R. Civ. P. 19(a)(1).

20 To determine whether a non-party is necessary under Rule 19(a), a court conducts  
21 a two-pronged analysis: First, a court determines whether "complete relief" is possible  
22 among those already parties to the suit; and second, a court decides whether the non-party  
23 has a "legally protected interest in the suit." *Yellowstone County v. Pease*, 96 F.3d 1169,  
24 1172 (9th Cir. 1996). If a non-party satisfies either of the two prongs, the non-party is  
25 necessary. *Id.* Defendants assert that joinder is required pursuant to the second prong,  
26 Rule 19(a)(1)(B). Dkt. 30, 2-3.

1 Under the second prong, a court must determine “whether the absent party has a  
2 legally protected interest in the suit.” *Makah Indian Tribe v. Verity*, 910 F.2d 555, 558  
3 (9th Cir. 1990) (emphasis removed). “If a legally protected interest exists, the court must  
4 further determine whether that interest will be impaired or impeded by the suit.  
5 Impairment may be minimized if the absent party is adequately represented in the suit.”  
6 *Id.* (emphasis removed) (citations omitted).

7 Analysis under the second prong “concerns prejudice, either to the absent persons  
8 or to those already parties.” *Eldredge v. Carpenters 46 Northern California Counties*  
9 *Joint Apprenticeship and Training Committee*, 662 F.2d 534, 538 (9th Cir. 1981). When  
10 an absent party is aware of an action, but chooses not to claim an interest, a court may be  
11 less inclined require joinder. *See United States v. Bowen*, 172 F.3d 682, 688-89 (9th Cir.  
12 1999); *see also Eldredge*, 662 F.2d at 538 (concluding that while joinder was not  
13 required, it remained a possibility that an interested party could move to intervene under  
14 Federal Rule of Civil Procedure 24 if the party was concerned that it would not be  
15 adequately represented by the defendant).

16 First, Defendants contend that the parties who have requested copies of the RM-71  
17 petitions should be joined in order to provide the parties an opportunity “to assert their  
18 own statutory and constitutional interests in obtaining access to the RM-71 petitions and  
19 the information contained therein.” Dkt. 23 at 4.

20 Second, Defendants maintain that if the requesters are not joined, they (or others  
21 similarly situated) may start separate litigation asserting a right to the RM-71 petitions.  
22 Defendants maintain that “the Secretary of State could be caught between an order [by  
23 this Court] enjoining release of the records . . . and an order [by another court] granting  
24 severe sanctions [against the State] for failing to release the same records” pursuant to  
25 state laws requiring disclosure of public records. Dkt. 23 at 5. Defendants argue that  
26 parties absent from this action would not be bound by the results of this case, and that  
27 there is nothing that would prevent them from filing actions in state or federal courts  
28

1 seeking to relitigate the constitutional issues decided by this Court. Dkt. 30 at 5. As a  
2 result, Defendants contend, the possibility of inconsistent rulings cannot be foreclosed. *Id.*

3 The Court concludes that an order requiring joinder is not necessary because the  
4 requesting parties asserting an interest in this matter may move to intervene pursuant to  
5 Rule 24. *See Bowman, supra*. In addition, even if the Court were to require joinder, it is  
6 conceivable that another citizen or entity would seek disclosure of the petitions after a  
7 decision is rendered in this case, in the event the Court were to rule in favor of Plaintiffs.  
8 Therefore, granting Defendants' motion would not necessarily foreclose the possibility of  
9 a separate action being commenced. In any event, the Court concludes that any risk to  
10 Defendants of incurring inconsistent obligations under Rule 19(a)(1)(B)(ii) is speculative  
11 and does not warrant required joinder.

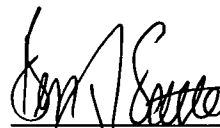
12 Finally, while it appears that the requesting parties are aware of Plaintiffs' lawsuit,  
13 the Court concludes that Defendants should provide notice to the requesting parties of the  
14 lawsuit in order to provide them an opportunity to move to intervene if they so choose.

### 15 III. ORDER

16 Therefore, it is hereby

17 **ORDERED** that Defendants' motion to join additional parties (Dkt. 23)  
18 is **DENIED**. It is further **ORDERED** that Defendants provide notice of Plaintiffs' lawsuit  
19 to the requesting parties as soon as possible.

20 DATED this 24<sup>th</sup> day of August, 2009.

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23 BENJAMIN H. SETTLE  
24 United States District Judge  
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